

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA, LLC D/B/A IXO,

Plaintiff,

v.

CME GROUP, INC., BOARD OF TRADE OF
THE CITY OF CHICAGO, INC., NEW YORK
MERCANTILE EXCHANGE, INC., BATS
TRADING, INC., INTERNATIONAL
SECURITIES EXCHANGE, NASDAQ OMX
GROUP, INC., NASDAQ OMX PHLX, INC.,
NYSE EURONEXT, NYSE ARCA, INC., NYSE
AMEX LLC, SECURITIES INDUSTRY
AUTOMATION CORPORATION, CHICAGO
BOARD OPTIONS EXCHANGE, BOSTON
OPTIONS EXCHANGE GROUP LLC, OPTIONS
PRICE REPORTING AUTHORITY,

Defendants.

Civil Action No. 6:09-cv-327 LED

Hon. Leonard E. Davis

JURY TRIAL DEMANDED

**DECLARATION OF JOAN C. CONLEY
IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER VENUE**

I, JOAN C. CONLEY, on the information that I have gathered and facts made available to me after a reasonable investigation, declare as follows:

1. I am Senior Vice President and Corporate Secretary of NASDAQ OMX Group, Inc. ("NASDAQ OMX") and hold the same position with NASDAQ OMX PHLX, Inc. ("PHLX"). I am knowledgeable about the operations of each company. I submit this declaration in support of Defendants' Joint Motion to Transfer Venue to the United States District Court for the Southern District of New York.

2. NASDAQ OMX, operating directly and through its subsidiaries, is a world-wide leader in the delivery of trading, exchange technology, securities listing, and public company services.

3. PHLX, a wholly-owned subsidiary of NASDAQ OMX, operates a marketplace for the trading of stocks and options.

4. NASDAQ OMX's headquarters is located in New York City, New York. NASDAQ OMX also has offices in Rockville, Maryland, and Shelton, Connecticut, and leases secondary administrative, sales, and disaster preparedness facilities in California, Florida, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, and Washington, DC. NASDAQ OMX does not lease or own any offices in Texas.

5. PHLX's headquarters, and only office, is located in Philadelphia, Pennsylvania. I understand that for the purposes of this lawsuit, PHLX agrees that it was subject to personal jurisdiction in New York at the time this lawsuit was originally filed.

6. I understand that in the captioned lawsuit, Realtime Data, LLC ("Realtime") claims that NASDAQ OMX and PHLX are either directly infringing or indirectly infringing certain patents Realtime claims to own by making, using, selling, and/or offering for sale, one or more data compression products and/or services.

7. I understand that Realtime has not identified a specific NASDAQ OMX or PHLX product or service accused to infringe, despite requests that it do so. However, the PHLX employees who have direct responsibility for development or use of data compression technology, and their supervisors, are located in Philadelphia, Pennsylvania. NASDAQ OMX personnel who have direct responsibility for development or use of data compression technology, and their supervisors, are located in New York, Philadelphia, or Rockville, Maryland. Accordingly, the majority – if not all – documents related to data compression will be located in New York, Philadelphia, or Rockville, Maryland.

8. Given the vagueness of the allegations, it is difficult to identify relevant witnesses at this time, but NASDAQ OMX and PHLX have identified at least four persons knowledgeable about their use of data compression technology, all of whom are located in New York City or Philadelphia.


9. Similarly, the primary data centers used by NASDAQ OMX and PHLX are located in New Jersey. Source code and other information and evidence related to NASDAQ OMX and PHLX's data compression is also located at these data centers in New Jersey.

10. Neither NASDAQ OMX nor PHLX have any management, personnel, or resources related to data compression technology in Texas, or within 100 miles of Tyler, Texas.

11. If NASDAQ OMX and PHLX personnel are required to testify in Tyler, Texas, the disruption to their business operations will be significant. It is far more convenient for these same employees to testify in New York City. For those personnel located in New York City, NASDAQ OMX's headquarters are located less than a mile from the federal courthouse. For those personnel located in Philadelphia, the train ride on Amtrak from Philadelphia to New York City on average takes less than 1.5 hours. Thus, NASDAQ OMX and PHLX personnel who serve as witnesses will be able to minimize the amount of time they would need to spend away from their regular work duties if trial is in New York City. In addition, the aforementioned and other NASDAQ OMX and PHLX employees regularly travel between the companies' New York City, Rockville, and Philadelphia offices as a part of their regular duties. In contrast, NASDAQ OMX and PHLX would incur significantly more lost employee time and out of pocket expenses for its witnesses to travel to Tyler, Texas to testify.

I declare under penalty of perjury under the laws of the United States that to the best of my knowledge the foregoing is true and correct.

Executed on November 16, 2009.



JOAN C. CONLEY